HIGH COURT OF UTTARANCHAL AT- NAINITAL.
Writ Petition No. 1404(S/S)2001
(old no. 29200 of 1998)

Diwan Singh S/o Sri Prem Singh,
R/o Narayan Nagar, Mallital,
District Nainital. ...Petitioner.

Vs.

The District Judge,
Nainital. .....Respondent.
Sri Manoj Tewari, learned counsel for the petitioner,
Sri Sharad Sharma Advocate Special Counsel for the respondent.

Hon'ble M.M. Ghildiyal, J.:

Heard Sri Manoj Tewari, learned counsel for the petitioner and Sri Sharad Sharma, Special Counsel for the respondent.

By means of this writ petition, the petitioner has challenged the order dated 12.06.1998 passed by the respondent/District Judge, Nainital by which the respondent has terminated the services of the petitioner who was working, at the relevant time, as Operator-cum-Electrician at Kashipur in the Judgeship Nainital.

Contention of the petitioner is that the petitioner was appointed by the respondent vide order dated 17.07.1980 as Peon in the Court of IIIrd Addl. Munsif Magistrate, Kashipur. In the month of September 1980, the petitioner was transferred to the Court of District Judge, Nainital. He was again transferred to Kashipur vide order dated 07.03.1994. His services were lateron terminated vide order dated 02.04.1998 passed by the District Judge, Nainital, under Uttar Pradesh Temporary Government Servants (Termination of Service) Rules 1975 (hereinafter referred to as the Rules). The termination order was simplicitor in nature and without assigning any stigma.

Submission of the learned counsel of the petitioner is that the petitioner was appointed in the year 1980 and worked with the establishment for 18 years, therefore, the services of the

petitioner cannot be terminated under the aforesaid Rules as he cannot be treated to be under probation for such a long period of 18 years. I find force in the submission of the learned counsel for the petitioner that a person who is continuously working for 18 years, cannot be thrown away from services under the aforesaid Rules.

The respondent has filed counter affidavit. In para 8 of the counter affidavit, serious allegations have been levelled against the petitioner on the basis of the reports received from some of the officers to whom the petitioner was attached during the tenure of his service.

In para-8 of the counter affidavit, the respondent has stated as under:-

"That the contents of para 6 of the writ petition are not admitted. The petitioner's past conduct has been highly unsatisfactory as would bear out from the facts narrated as under:

(a) The petitioner was attached as orderly with Sri Nasim Ahmad (since deceased), the then Munsif, Rudrapur in the year 1985-86, who made this annual remark that the work of the petitioner was highly unsatisfactory who was always inclined to avoid responsibility and prefer to remain on leave than on duty and he would proceed on leave even without prior information;

(b) Petitioner when attached with the Court of Munsif, Rudrapur in the year 1986-87, was again given an adverse entry that the work of petitioner was unsatisfactory and conduct objectionable. He was found usually drunk even on duty and the work and conduct of the petitioner was called for a close watch;

(c) The petitioner while he remained attached to the office of Munsif, Rudrapur, was given adverse entry in the year 1987-88 again. His work was found highly unsatisfactory, who remained on leave for considerable period without prior intimation and he

had left his duty in violation of P.O's order to the contrary;

(d) Sri Nasim Ahmd (since deceased), the then Addl. Civil Judge, Nainital had made a complaint on 02.12.1986 that the petitioner refused to comply with the order of his transfer. It was also mentioned therein that the petitioner is a misbehaved person and is always inclined to insubordination.

(e) Thereafter the services of the petitioner were terminated by the order dated 02.12.1986. Lateron Sri Diwan Singh confessed to his guilt in a written application dated 24.12.1986, wherein he clearly mentioned that he had resorted to medical leave only for avoiding his transfer order. It showed that he could involved in any kind of manipulation by way of obtaining medical certificate or otherwise if it suited to his convenience. It also suggested that the medical certificate obtained by him subsequently was false just to justify his unauthorised absence from duty.

(f) The then District Judge, Nainital took a lenient view and he was reinstated to his job subject to minor penalty and was then transferred to outlying Court, Rudrapur. The petitioner again left his duty with bag and baggage on 09.10.1987 even when he was directed not to do so by the then Munsif, Rudrapur when he was told that it would not be possible to permit him to leave the station, Sri Diwan Singh threw the application for permission to leave the Station at the Munsarim and left Rudrapur, as has been clarified by Sri Upadhyaya, the then Munsif, Rudrapur in his letter dated 14.12.1987.

(g) Sri R.M. Rai, the then Addl. District Judge, Nainital was asked to submit a detailed report regarding the work and conduct of Sri Diwan Singh. According to the report dated 21.01.1988 submitted by Sri Rai, it refers to persistent misconduct, dereliction of duty, misbehaviour etc. of Sri Diwan Singh.

(h) One Class IV employee of Nainital Judgeship, named, Wajid also made a complaint to the effect that on 15.10.1987 at 4:30 p.m. away the judgment box held by Sri Wajid but also abused him. At that time Sri Diwan Singh was in a drunken condition.

Under these circumstances, the services of the petitioner were regularised. It is wrong to allege that the complaints against him were submitted to the District Judge baselessly on the basis of which departmental enquiry was entrusted to Sri R.K. Sharma, the then Addl. District Judge, Nainital."

In para-24 of the counter affidavit, the respondent has stated as under:-

"That the Enquiry no. 4 of 1977 and Enquiry no. 1 of 1997 were instituted on the basis of the complaints made by the then Judicial Officers, Kashipur about the conduct of Sri Diwan Singh. One of those complaints was that on 13.05.1977 he attempted to molest Smt. Savitri Devi, widow- newly appointed Class IVth employee at Kashipur. Another complaint was that on 23.09.1996, Sri Diwan Singh refused to install tube-light on the building of Civil Court's Kashipur despite the instructions issued by the then Dy. Nazir, Kashipur. It was also complained that Sri Diwan Singh remained absent on 31.08.1996 without prior information and permission from his duty and he again remained absent on 11.09.1996, while Lok Adalat was held at Kashipur and he was to operate generator in Civil Courts building Kashipur on that day. On 13.03.1996, he refused to obey the directions of Dy. Nazir about fixing a bulb in the Civil Courts building."

It is stated in the counter affidavit that the past conduct of the petitioner has been highly unsatisfactory. The services of the petitioner were also terminated by the then District Judge, Nainital vide order dated 25.01.1988, however on the representation of the petitioner, the High Court, Allahabad has set-aside the order of termination and consequently, the petitioner was reinstated on 01.08.1991.

After the continuous disobedience shown by the petitioner a departmental enquiry was also entrusted against

the petitioner and report in this regard was submitted by the Enquiry Officer. The report of the Enquiry Officer has also been filed by the petitioner as annexure no. 4 & 5. In the report, the Enquiry Officer has held that in relation to the charge levelled against the petitioner that the petitioner is habitual in not obeying the orders passed by the officers of the Judgeship, was found proved. Thereafter, a show cause notice was also issued to the petitioner.

Learned counsel for the respondent has submitted that the petitioner has remedy to file appeal against the order of termination passed by the District Judge under Rule 7(2)(b) of the Uttar Pradesh Subordinate Courts Staff (Punishment & **Appeals) Rules, 1978. Rule-7 provides as under:-**

"7. Appeals.- (1) A person against whom an order imposing a penalty specified in clause (a) or clause (b) of sub-rule (1) of Rule 4 has been passed by the presiding officer of a subordinate court, other than the Court of District Judge, may file an appeal to the District Judge.

(2) A person against whom an order:

a. imposing a penalty specified in any of the clauses (a) to (h) of sub-rule (1) of Rule 4 has been passed by a District Judge;or

b. **of enhancement of punishment has been made by a District Judge in appeal filed under sub-rule (1) of this rule; may file an appeal to the High Court."**

Under the aforesaid Rule, a person against whom penalty has been imposed under Clause (a) or Clause (b) of Sub Rule 1 of Rule 4 of the Uttar Pradesh Subordinate Courts Staff (Punishment & Appeals) Rules, 1978, may file an appeal to the District Judge and if penalty has been imposed by the District Judge, he may file appeal in the High Court. Rule 4 relates to punishment after enquiry.

The contention of the petitioner is that since the order has been passed by the respondent without receiving any enquiry report from the Enquiry Officer duly appointed for holding such

enquiry but it was an order of simplicitor itself under Uttar Pradesh Temporary Government Servants (Termination of Service)Rules 1975, therefore, no appeal is maintainable against this order.

I find force in the submission of the learned counsel for the petitioner. Even if the appeal is provided, there is no complete bar in entertaining the writ petition because herein the case, there is no provision for appeal, therefore, the writ petition is maintainable. Since the order of termination has been passed under Uttar Pradesh Temporary Government Servants (Termination of Service) Rules 1975, without affording any opportunity to the petitioner who rendered services of 18 years, the order is not sustainable in the eyes of law.

Learned Special Counsel has submitted that as many as six enquiries were initiated against the petitioner for various allegations.

Though, the respondent has come with the case in the counter affidavit levelling various allegations against the petitioner but by way of counter affidavit the respondent cannot develop its case, yet this Court cannot ignore the allegations which has been levelled against the petitioner in the counter affidavit. Now it is open for the respondent to pass appropriate orders on the basis of enquiry for allegations levelled against the petitioner during his service tenure.

For the reasons stated above, the writ petition is partly allowed. The order of termination of the petitioner dated 12.06.1998 passed by the respondent is hereby quashed. The respondent shall pass appropriate order in respect of the back wages of the petitioner.

(M.M. Ghildiyal, J.)

March 22, 2005:
NCM: